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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,732	11/09/2001	Sam H. Hay	HAYPAT7	7367

20115 7590 07/26/2005

MARK CLODFELTER  
555 SPARKMAN DRIVE  
SUITE 1602D  
HUNTSVILLE, AL 35816

EXAMINER
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CHOOBIN, BARRY

ART UNIT	PAPER NUMBER
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2625

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/037,732

**Applicant(s)**

HAY, SAM H.

**Examiner**

Barry Choobin

**Art Unit**

2625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-7,9,10,12-14,16 and 17 is/are rejected.
- 7) ☒ Claim(s) 2-4,8,11,15 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of group I in the reply filed on 1/31/2005 is acknowledged.
2. Note that claim 6 is a repeat of claim 5. Correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 5, 6, 7, 9, 10, 13, 14, 16, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Hay et al (US 5,632,282).

As to claim 1, Hay et al disclose a method for determining optical status of each individual eye of a pair of eyes of a subject comprising the steps of (fig.3):

- A) Imaging both of said pair of eyes using a digital imaging device while utilizing a standard set of uniform imaging conditions and visual tasks while performing said imaging (column 12, lines 11-21),
- B) Isolating a retinal reflex from each of said pair of eyes (column 12, lines 11-21),
- C) Applying a series of algorithms to statistically determine a plurality of parameters related to each said retinal reflex (fig.12a-b).

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As to claim 5, Hay discloses comparing said plurality of parameters from each said retinal reflex taken from said individual to a like set of parameters taken from a normal eye (see abstract lines 4-7).

As to claim 7, Hay discloses comparing said plurality of parameters from one of said retinal reflexes taken from said individual with parameters from the other of said retinal reflexes taken from said individual (see abstract lines 8-10).

As to claims 9, 10, Hay et al disclose superimposing said plurality of parameters from one of said retinal reflexes taken from said individual over said parameters taken from a normal retinal reflex (column 15, lines 35-65 and fig. 9c).

As to claim 12, Hay et al disclose selecting said algorithms based on their predictivity of eye disorders (fig. 12c).

As to claim 13, Hay et al disclose selecting said algorithms based on their predictivity of ocular balance between said retinal reflexes (fig. 2b).

Claims 14 and 16-17 are similarly analyzed and rejected.

***Allowable Subject Matter***

5. Claims 2-4, 8, 11, 12, 15 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***CONTACT INFORMATION***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barry Choobin whose telephone number is 571-272-7447. The examiner can normally be reached on M-F 7:30 AM to 18:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta can be reached on 571-272-7453. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Barry Choobin  
7/18/05